IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1087 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOK @ KIRMANI MANSING THAKOR - Applicant(s)

Versus

DEPUTY COMMISSIONER OF POLICE & 1 - Respondent(s)

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Appearance :

Shri Mahendra U. Vora for MR NM KAPADIA for Applicant(s) : 1,

RULE SERVED for Respondent(s) : 1,

Mrs. Hansa B. Punani, Ld. A.P.P. for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 20/10/2005

ORAL JUDGMENT

1. In this petition the order dated 29.03.2005 passed by the respondent no.1, Exeterning Authority in exercise of powers under Section 56(b) and the order dated 08.08.2005 passed by the respondent no.2, the appellate authority in exercise of powers under Sub-Section 3 of Section 60 of the Bombay Police Act, by which the first impugned order of respondent no.1 was confirmed and the petitioner stands externed from the area of Police Commissioner, Ahmedabad City and the adjoining, contiguous districts of Ahmedabad Rural, Gandhinagar, Kheda and Mehsana for a period of 2 years, both the orders are challenged on the

ground that in exercise of powers of both the impugned orders are unreasonable, arbitrary and violative under Article 14, 19 and 21 of the Constitution of India.

2. The show cause notice under Section 59 of the Bombay Police Act, 1951 was issued by respondent no.1 asking him to show cause as to why the petitioner should not be externed from the area of Ahmedabad, Police Commissionerate, Ahmedabad Rural, Kheda, Gandhinagar and Mehasana for a period of 2 years sinnce the activities of the externee are detrimental to the public interest, since the petitioner is indulging into usage of abusive language and extorting money from the traders of two localities of Asarwa and often indulging into outraging the modesty of women of that

area. A reply was submitted by the externee, denying the allegations levelled in the show cause notice and thereafter written submissions were also made and certain decision of this Court on the subject matter were relied upon by the petitioner by making specific grievance. That there is a delay in the proceedings of externment and the show cause notice is also un-clear and vague. Therefore, the request was made to withdraw the show cause notice and not to proceed with further action pursuant to that show cause notice.

3. The respondent no.1, however, after considering the reply and written submissions of the petitioner and relying on the allegations of show cause notice rejected the defense of the petitioner and passed the order on

29/03/2005 by which the petitioner was externed from city area of Ahmedabad Police Commissioner and the contiguous districts of Ahmedabad Rural, Gandhinagar, Kheda and Mehsana for a period of 2 years and it was observed that if the petitioner is not externed from the adjoining districts, he is likely to continue in such illegal activities through his accomplices.

4. The aforesaid order came to be challenged by filing an appeal under Section 60 of the Act and various contentions were raised in the memo of appeal. It was contended before the Appellate Authority that the allegations against the petitioner were vague and there is no evidence about petitioner being a head-strong person and even the reply and the written submissions,

submitted by the petitioner in support of his defense, were not considered in its correct perspective and even reliance placed on the decision of the High Court of Gujarat about the subject matter, were also not considered, much less dealt with. In support of the arguments and the grounds in appeal, the learned advocate also relied upon the various case-laws even before the appellate authority.

5. The appellate authority however, did not find any infirmity in the order of the appellate authority and confirmed the order after considering the certain facts which were not the part of the show cause notice about registration of crime against the externee being C.R.No.93 of 2002 and 5002 of 2003 under various provisions of Indian Penal Code

and of Prevention of Gambling Act.

6. The learned advocate for the petitioner has challenged the orders of both the competent authority as well as the appellate authority on the ground of non-application of mind inasmuch as there was no opportunity given to the petitioner for the evidence relied upon by the appellate authority about the registration of different crimes against the externee and the first time it was reflected in the order of the appellate authority. Thus, the learned advocate submitted that order of appellate authority is also a case of unjust exercise of power in arbitrary manner and the said order travels beyond the scope of show cause notice. It was further submitted that as law laid down by this Court in the decision reported

at 1997 Criminal Law Reporter (Guj.) 139, where the learned Single Judge after relying the judgment of Division Bench of this Gujarat High Court prescribed reasonable period of exercising the power under Section 56 of the Bombay Police Act, 1951 is 6 months and by this time the proceedings ought to have been completed. Therefore, also the order of externment in the present case is contrary to the decision of this Court and therefore also it requires to be quashed and set aside.

7. Learned A.P.P. for the State has defended the action of the respondent authority and it was submitted that in view of the evidence on record, the orders passed by the concerned authorities cannot be said to be violative of Article 14, 19 and 21 of

the Constitution of India.

8. Having considered the rival submissions of the parties, perusal of the record of the case, it is evident that the show cause notice was issued to the petitioner on 18.07.2003 and reply as well as written submissions were filed in the proceeding before respondent no.2, on 30th September, 2004. Thereafter, externing authority has passed the order on 29.03.2005, the said exercise has resulted in unexplained substantial delay in passing the order. Not only that, but, no specific reasons have been assigned by the externing authority to extern the petitioner from adjoining districts of Ahmedabad City, i.e. Ahmedabad Rural, Gandhinagar, Kheda and Mahesana for a period of 2 years and when one of the reasons relied upon by

the externing authority to extern the petitioner is the illegal activities of the petitioner of outraging the modesty of the women/ girls of the area concerned, the satisfaction of the externing authority that such activities can be continued through the representative of the petitioner from adjoining districts, cannot be said to be a reasonable ground for passing the order of externment.

9. In view of the above and the fact that appellate authority has considered a totally new evidence about registration of three different crimes against the petitioner, which were not even mentioned in the show cause notice or for which at no point of time any opportunity was given to the petitioner to show cause and therefore, also the

exercise of powers by the concerned authority is unreasonable, arbitrary and violative of principle of natural justice and since it imposes unreasonable restrictions on the fundamental right of the petitioner, therefore violative of Articles 14, 19 and 21 of the Constitution of India and therefore, both the orders i.e. the order of externment dated 29.03.2005 passed by the Externing Authority and the and the order dated 08.08.2005 passed by the appellate authority confirming the said externment of the externee, are hereby quashed and set aside. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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